

**United States Department of Labor
Employees' Compensation Appeals Board**

B.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Edison, NJ, Employer**

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Docket No. 15-571

Issued: May 26, 2015

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 13, 2015 appellant, through counsel, filed a timely appeal from a September 19, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly adjudicated appellant's claim as a claim for a traumatic injury sustained on May 1, 2012 in the performance of duty.

On appeal, counsel contends that appellant's claim should be adjudicated as a recurrence of her May 18, 2011 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 22, 2012 appellant, a 56-year-old rural carrier, filed a recurrence of disability claim (Form CA-2a) alleging that on May 1, 2012 she sustained a recurrence of disability causally related to her May 18, 2011 employment injury. Under File No. xxxxxx544, OWCP accepted that appellant sustained a left ankle injury on May 18, 2011 in the performance of duty. On her claim form, appellant indicated that she reported to work for driving skills testing on May 1, 2012 and her left ankle pain began during the testing and worsened the more she got in and out of a postal vehicle to serve mailboxes.²

Appellant submitted reports dated May 3 through June 26, 2012 from her attending physician, Dr. Norman Glassner, a Board-certified orthopedic surgeon. On May 3, 2012 Dr. Glassner indicated that appellant tried to go back to work and it had been “so long since she drove the mail truck that she actually had to take a course to make sure she was still competent.” He stated that appellant “did the course but her feet [were] very close together in the truck” and her left ankle became more and more painful. When appellant exited the truck she was limping severely and she was more or less back to where she was earlier in her rehabilitation process. Dr. Glassner found that appellant’s left ankle was painful both medially and laterally, there was some swelling and tenderness along the medial malleolus and the lateral anterior talar fibula joint. An x-ray showed early moderate arthritic changes and there was some evidence of joint narrowing. Dr. Glassner diagnosed traumatic arthritis of the left ankle and opined that appellant had a permanent disability to the left ankle which was preventing her from performing her job duties, including standing, driving, and delivering mail. He advised that appellant was only capable of a desk job.

In a July 25, 2012 letter, OWCP informed appellant that her claimed recurrence of disability would be developed as a new traumatic injury occurring on May 1, 2012 under a separate claim number.³ It requested additional factual and medical evidence and afforded appellant 30 days to respond to its inquiries.

By decision dated August 27, 2012, OWCP advised appellant that the circumstances surrounding her claim resulted in its conversion from a recurrence claim to a traumatic injury claim. It then denied appellant’s traumatic injury claim finding that she failed to submit sufficient evidence to establish that the May 1, 2012 incident occurred, as alleged.

On May 30, 2013 appellant, through counsel, requested reconsideration and submitted a narrative statement from appellant dated May 29, 2013 and progress reports from Dr. Glassner dated March 6 through June 26, 2012.

By decision dated August 13, 2013, OWCP modified its prior decision, finding that the May 1, 2012 incident occurred, as alleged, but denying the claim on the basis that the medical evidence was insufficient to establish a diagnosis in connection with the employment incident.

² Appellant also submitted a claim for wage-loss compensation for the period May 3 to June 28, 2012.

³ OWCP assigned File No. xxxxxx722 to this new traumatic injury, the subject of this appeal.

On October 17, 2013 appellant, through counsel, requested reconsideration and submitted an August 7, 2013 report from Dr. Glassner who indicated that he had been treating appellant “since [her] May 18, 2011 injury to the left ankle while working” for the employing establishment. He stated that she was admitted to an emergency room on “May 18, 2013” with the chief complaint for a fracture dislocation of the left ankle and then saw her in his office on “May 19, 2011.” Dr. Glassner recounted appellant’s medical history and reiterated his conclusion that she sustained a recurrence of her previously accepted left ankle injury when she attempted to return to work on May 1, 2012.

By decision dated January 21, 2014, OWCP again modified its decision to reflect that the medical evidence established a diagnosis, but failed to establish that appellant’s left ankle arthritis was causally related to the May 1, 2012 employment incident. It found Dr. Glassner’s report to be incongruous as it stated that appellant was admitted to the hospital on “May 18, 2013” due to a fracture dislocation of the left ankle.

On April 30, 2014 appellant, through counsel, requested an appeal before the Board. In a letter dated June 24, 2014, appellant’s counsel submitted a request to withdraw the appeal. By order dated July 30, 2014, the Board granted appellant’s request and dismissed her appeal.⁴

On August 14, 2014 appellant, through counsel, requested reconsideration.

By decision dated September 19, 2014, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness.⁵ The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁶ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.⁷

⁴ *Order Dismissing Appeal*, Docket No. 14-1254 (issued June 30, 2014).

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id.*

⁷ *Id.* at § 10.5(ee).

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant sustained her initial injury on May 18, 2011 and returned to work on May 1, 2012. On her May 22, 2012 notice of recurrence, appellant stated that she experienced pain in her left ankle while getting in and out of a postal vehicle during her driving skills testing on May 1, 2012.

Appellant first sought medical treatment on May 3, 2012 and her attending physician, Dr. Glassner, a Board-certified orthopedic surgeon, stated that she tried to return to work and it had been “so long since she drove the mail truck that she actually had to take a course to make sure she was still competent.” Dr. Glassner stated that appellant “did the course but her feet [were] very close together in the truck” and her left ankle became more and more painful. He found that appellant’s left ankle was painful both medially and laterally, there was some swelling and tenderness along the medial malleolus and the lateral anterior talar fibula joint. An x-ray showed early moderate arthritic changes and there was some evidence of joint narrowing. Dr. Glassner diagnosed traumatic arthritis of the left ankle and opined that appellant had a permanent disability to the left ankle which was preventing her from performing her job duties, including standing, driving, and delivering mail.

In a report dated August 7, 2013, Dr. Glassner indicated that he had been treating appellant “since [her] May 18, 2011 injury to the left ankle while working” for the employing establishment. He stated that she was admitted to an emergency room on “May 18, 2013” with the chief complaint for a fracture dislocation of the left ankle and then saw her in his office on “May 19, 2011.” In its decision dated January 21, 2014, OWCP found Dr. Glassner’s report to be incongruous as it stated that appellant was admitted to the hospital on “May 18, 2013” due to a fracture dislocation of the left ankle.

OWCP procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files. For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁸ In the instant case, the record reveals that appellant had a previously accepted claim for a left ankle injury sustained on May 18, 2011, assigned File No. xxxxxx544. Appellant subsequently filed a recurrence claim of the May 18, 2011 employment injury, assigned File No. xxxxxx722, for a May 1, 2012 injury to the same part of the body. The factual and medical evidence pertaining to appellant’s May 18, 2011 employment injury in File No. xxxxxx544, however, is not contained in the case record.

Before OWCP and on appeal, counsel contends that appellant’s claim should be adjudicated as a recurrence of her May 18, 2011 employment injury. However, OWCP continued to adjudicate the claim as a new traumatic injury claim even though appellant submitted evidence to support her claim for a recurrence of the May 18, 2011 left ankle injury. It failed to properly combine or request combination of the present case record with the record of

⁸ See *A.M.*, Docket No. 14-9 (issued April 15, 2014); Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

the May 18, 2011 employment injury, which appellant implicated as the initial cause of her May 1, 2012 left ankle condition.⁹ The Board will consequently remand the case for OWCP to combine the current case record with File No. xxxxxx544 and determine whether she sustained either a recurrence of disability due to her May 18, 2011 employment injury or a new work injury. Following this and any further development deemed necessary, it shall issue a *de novo* decision on the merits.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: May 26, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *M.Z.*, Docket No. 13-414 (issued June 26, 2012) (where the Board remanded the case to OWCP to combine case files where it did not adequately explain why it adjudicated appellant's notice of recurrence of disability as a new injury given that she alleged that she experienced pain immediately upon returning to work rather than relating her condition to new employment factors).